Supreme Court, U.S.
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CLERK

No. 99-1132

In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

CHARLES McARTHUR,

Respondent.

On Writ of Certiorari to the Appellate Court of Illinois

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 4, 2000
CERTIORARI GRANTED MAY 1, 2000

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LISTING OF RELEVANT DOCKET ENTRIES

People of the State of Illinois v. Charles McArthur

Date	Docket Entry
Circuit Court of the Sixth Judicial Circuit Moultrie County, Illinois	
April 2, 1997	Complaint for violation of Statute and Notice of Arrest Without Warrant; Defendant Charles McArthur appears and is released on bond; Bail Bond issued.
May 9, 1997	Criminal Information filed charging Defendant with knowing possession of drug paraphernalia.
May 12, 1997	Defendant appears; matter continued.
May 19, 1997	Entry of Appearance of counsel for Defendant.
May 28, 1997	Criminal Informations filed charging Defendant with additional count of knowing possession of drug paraphernalia and with knowing possession of not more than 2.5 grams of marijuana.
May 30, 1997	Defendant's waiver of trial by jury filed.
May 30, 1997	Defendant appears with counsel; plea of not guilty entered. Case set for hearing on Motion to Suppress Evidence and for trial.

June 17, 1997	Laboratory report regarding analysis of marijuana served and filed.
June 27, 1997	Defendant's Motion to Suppress Evidence filed.
August 25, 1997	Suppression hearing held; Motion to Suppress Evidence granted.
August 28, 1997	State's Certificate of Substantial Impairment and Notice of Appeal filed.

Illinois Appellate Court, Fourth District

May 7, 1999	Opinion of the Illinois Appellate Court, Fourth District, affirming the Circuit Court's order is issued. *People v. McArthur*, 304 Ill. App. 3d 395, 713 N.E. 2d 93 (4th Dist. 1999).

Illinois Supreme Court

October 6, 1999	Order denying petition of the People of the State of Illinois for leave to appeal is issued.

SEARCH WARRANT

CIRCUIT CLERK

Moultrie County, Illinois
Sixth Judicial Circuit

THE PEOPLE OF THE STATE OF ILLINOIS
TO ALL PEACE OFFICERS OF THE STATE:

On this day Richard L. Skidis and Tera M. McArthur, Complainants, have subscribed and sworn to a complaint for search warrant before me. Upon examination of the complaint, I find that it states facts sufficient to show probable cause.

I therefore command that you search the following described premises:

> The residence of Charles S. McArthur, being a mobile home located at Lot #59 Gravens Trailer Park, Sullivan, Moultrie County, Illinois,

and seize the following instruments, articles and things:

> Cannabis, Cannabis packaging and Drug or Cannabis Paraphernalia,

which have been used in the commission of, or which constitute evidence of the offense of **Unlawful Possession of Cannabis** committed at or about Lot #59 Gravens Trailer Park in Sullivan, Moultrie County, Illinois, between April 1, 1997 and April 2, 1997.

I further command that a return of anything so seized shall be made without unnecessary delay before me or before any court of competent jurisdiction.

/s/ Dan L. Flannell
Judge of the Circuit Court
for the Sixth Judicial Circuit
of Illinois, Moultrie County,
Sullivan, Illinois.

Time and date of Issuance: 5:05 p.m. 4-2-97

IN THE CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MOULTRIE COUNTY, SULLIVAN, ILLINOIS

COMPLAINT FOR SEARCH WARRANT

Now come Richard L. Skidis, a sworn Peace Officer, and Tera M. McArthur, Complainants herein, and petition this honorable Court issue a Search Warrant to search the following premises, namely:

> The residence of Charles S. McArthur, being the mobile home located at Lot #59, Gravens Trailer Park in the City of Sullivan

located in the County of Moultrie and State of Illinois, and seize the following instruments, articles and things, to-wit:

> Cannabis, Cannabis Packaging, Drug and/or Cannabis Paraphernalia,

which have been used in the commission of, or which constitute evidence of the offense of Unlawful Possession of Cannabis committed at Lot #59 Gravens Trailer Park, Sullivan, Moultrie County, Illinois.

Complainants say that they have probable cause to believe, based upon the following facts, that the above listed things to be seized are now located upon the premises set forth above:

> (Please see affidavits of Richard L. Skidis and Tera M. McArthur, attached hereto and incorporated by reference.)

Dated this 2 day of April, 1997 at 5:00 p.m.

/s/ Tera McArthur
Complainant

/s/ Richard L. Skidis
Complainant

Subscribed and sworn to before me this 2 day of April, 1997.

/s/ Dan L. Flannell
Judge of the Circuit Court
for the Sixth Judicial Circuit
of Illinois, Moultrie
County, Sullivan, Illinois

STATE OF ILLINOIS)
) ss
COUNTY OF MOULTRIE)

EXHIBIT A

AFFIDAVIT

(In Support of Complaint for Search Warrant)

Comes now Richard L. Skidis, Affiant, and after being duly sworn upon oath deposes and states:

1. That he is a police officer for the City of Sullivan, Illinois and has been for eleven years.
2. That he is familiar with Charles S. McArthur and has been for approximately ten years.
3. That he knows that Charles S. McArthur has a reputation for possessing drugs and cannabis.
4. That he believes that Charles S. McArthur was a suspect in a previous narcotics investigation.
5. That on April 2, 1997 at approximately 3:40 P.M. he was at the residence of Charles McArthur at Lot #59 Gravens Trailer Park with Tera McArthur, the wife of Charles S. McArthur, for the purpose of keeping the peace while Tera M. McArthur retrieved her personal property pursuant to an Order of Protection issued from the Macon County Circuit Court.
6. That after Tera M. McArthur came out of the residence at Lot #59, she informed Officers Skidis and John Love that she had just observed cannabis in the living room of the residence.

7. That when questioned about the possession of cannabis in the residence by the Officers, Charles S. McArthur appeared nervous and evasive.

8. That he has known Tera M. McArthur for approximately ten years and believes her to be credible and reliable.

FURTHER AFFIANT SAYETH NOT:

/s/ Richard L. Skidis

Subscribed and sworn to before me this 2 day of April, 1997.

/s/ Dan L. Flannell
CIRCUIT JUDGE

STATE OF ILLINOIS)
) ss
COUNTY OF MOULTRIE)

EXHIBIT A

AFFIDAVIT

(In Support of Complaint for Search Warrant)

Comes now Tera M. McArthur, age 22, Affiant, and after being duly sworn upon oath deposes and states:

1. That she is the wife of Charles S. McArthur.

2. That on April 2, 1997 at about 3:40 P.M. she was in the residence of Charles S. McArthur at Lot #59 Gravens Trailer Park in Sullivan, Moultrie County, Illinois.

3. That she observed an amount of cannabis in the living room of that residence under the sofa.

4. That she observed Charles S. McArthur place the cannabis there.

5. That she has known Charles S. McArthur for approximately 18 months.

6. That she has seen him with cannabis and cannabis paraphernalia on numerous occasions.

7. That she knows what cannabis and cannabis paraphernalia look like.

8. That she has seen cannabis and cannabis paraphernalia on several occasions at that residence previously.

9. That Charles S. McArthur is known by her to regularly use cannabis.

FURTHER AFFIANT SAYETH NOT:

/s/ Tera McArthur

Subscribed and sworn to before me this 2 day of April, 1997.

/s/ Jackie D. Guin
NOTARY PUBLIC

IN THE CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MOULTRIE COUNTY, SULLIVAN, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS Plaintiff, v. CHARLES MC ARTHUR, Defendant.	)	No. 97-CM-44

REPORT OF PROCEEDING AT HEARING.

BE IT REMEMBERED that the above-entitled cause came on for hearing on the 25th day of August, 1997, before the Honorable Arthur F. Powers, Jr., Associate Judge.

APPEARANCES:

Moultrie County State's Attorney
Tim J. Willis
Moultrie County Courthouse
Sullivan, Illinois 61951

Appeared on behalf of the People,

Mr. Jeffry A. Justice
CAMPBELL & ROBINSON
500 Millikin Court
Decatur, IL 62525

Appeared on behalf of the defendant.

Whereupon the following proceedings were had and entered of record in said cause:

SUSAN BURSA
CERTIFIED SHORTHAND REPORTER
MOULTRIE COUNTY COURTHOUSE
SULLIVAN, ILLINOIS 61951

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Witness	DIRECT	CROSS	REDIRECT
Asst. Police Chief John Love	[Jt. App. 14]	[Jt. App. 19]	[Jt. App. 23]
Charles McArthur	[Jt. App. 25]	[Jt. App. 28]	

EXHIBITS

Description	MARKED	ADMITTED
(None)		

THE COURT: 97-CM-44, People versus Charles McArthur. Mr. Willis present. Defendant present with Attorney Jeff Justice.

The first matter, I think, should be the Motion to Suppress, even though it's set for trial today.

MR. JUSTICE: We agree.

THE COURT: Okay. Hearing on defendant's Motion to Suppress. Mr. Justice.

MR. JUSTICE: Your Honor, we would call Officer Love.

THE COURT: I see four officers in the room. Are you going to call all four of them; or do you know?

MR. JUSTICE: Probably just Officer Love.

MR. WILLIS: For purposes of the suppression motion, that's probably true.

THE COURT: Okay.

ASSISTANT CHIEF OF POLICE JOHN LOVE, called as a witness on behalf of the Defendant, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION
BY MR. JUSTICE:

Q: Would you give us your name and occupation, sir?

A: My name is John Edward Love. I am employed by the City of Sullivan as Assistant Chief of Police for the Sullivan Police Department, Sullivan, Illinois.

Q: How long have you been a police officer?

A: In total, approximately 15 or 16 years.

Q: How long have you been Assistant Chief?

A: I'd say approximately three years.

Q: Do other officers call you Assistant Chief or Chief?

A: It varies.

Q: I never know what the appropriate title is with an assistant.

On April 2, 1997, did you go to Lot 59 in Graven's Trailer Court here in Moultrie County?

A: Yes, sir.

Q: And what was the purpose of going there on that date?

A: I was approached by Tera Hubbard McArthur, who I was familiar with; and she asked if we would accompany her to that trailer while she could mover her personal belongings out of that trailer.

Q: And her relationship to Charles McArthur?

A: It would be her husband.

Q: Okay. And did she go there and move her stuff out?

A: Yes, sir.

Q: And did she speak to you about anything unusual after moving her stuff out?

A: Yes, sir.

Q: And what did she tell you?

A: She advised me that I ought to check the trailer, that Chuck had dope in there.

Q: Those were her exact words?

A: As I recall, sir.

Q: And did you ask her anything further or did she say anything further?

A: Not at that point.

Q: What happened after the statement was made by her?

A: I went back and knocked on the front door of the trailer. I was actually out on the porch area when Ms. McArthur advised me of this. I went to the front door, knocked, and Mr. McArthur came and answered the door.

Q: And, that's the gentleman to my right?

A: Yes, sir.

Q: And what did he and you talk about?

A: I advised Mr. McArthur of the statement that his wife had just advised me that he had dope in the trailer.

Q: And what did he say in response?

A: That he had no dope in the trailer.

Q: Continue with the conversation, as you best recall it, please?

A: I asked, as I told Mr. McArthur his wife's statement to me in reference to the dope, I asked him if he would care if I looked in the trailer for the dope. And Mr. McArthur stated, no, not without a warrant.

Q: Continue.

A: So, at that point, Mr. McArthur was standing outside the trailer, down by the steps. And I went back and

asked her if she would testify in front of a judge as to what she saw in the trailer, which she had advised me of, to see about getting a search warrant for the trailer.

Q: And what did she say?

A: She said she would.

Q: So what happened next?

A: Officer Skidis, who was also present, he left with Ms. McArthur to come to the State's Attorney's office. I went back up onto the porch area where Mr. McArthur was, told him what we was doing. And Mr. McArthur came out on the porch area, it's a wooden porch area, and stood there by me.

Q: Now, did you instruct Mr. McArthur to you [*sic*] come out of his trailer?

A: I don't recall how he actually came out, whether I told him or if he walked out on his own.

Q: And from that moment on, did you refuse to allow Mr. McArthur to return to his home.

A: No, sir.

Q: Did you refuse to allow him to enter the home without you being present?

A: Yes, sir.

Q: So you refused him the right to go into his own home, alone, from that point forward; is that correct?

A: Without me, sir.

Q: And was his mother, Mary Heddin, also present at the scene?

A: She came after, either he, Mr. McArthur, had asked to go in and use the phone. And I allowed him. We went in, and he called. And I believe that's when Mrs. Heddin came down there to be with Chuck or Mr. McArthur.

Q: And did you make the same statement to her that she would not be permitted to go in the home without your accompanying her?

A: Yes, sir.

Q: And did you continue to prevent Mr. Heddin, excuse me, Mr. McArthur from going in the home until what happened?

A: He went inside at least two or three times to get cigarettes, to use the phone, to call his sister. And I just accompanied him each time. And by accompanying Mr. McArthur, I accompanied him by basically just stepping right inside the door and just stood by the doorway the entire time, basically.

Q: All right. And was there a point at which the other officers returned?

A: Yes, sir.

Q: And did your procedure of either accompanying Mr. Heddin (sic) inside the home or not allowing him to go in alone continue until the other officers returned and executed the search warrant?

A: Yes, sir. It did.

Q: And upon the execution of the search warrant, they found some cannabis?

A: Yes, sir.

Q: And you, then, arrested Mr. McArthur at that point; is that correct?

A: I personally didn't, sir. It was Officer Skidis who placed Mr. McArthur under arrest.

Q: And that arrest took place at that time?

A: After the evidence was located, after the search warrant was done.

MR. JUSTICE: That's all the questions I have.

THE COURT: Mr. Willis.

MR. WILLIS: Thank you, Your Honor.

CROSS-EXAMINATION
BY MR. WILLIS:

Q: Assistant Chief Love, when Mrs. McArthur informed you and Officer Skidis that there was dope in the residence, did she just say that; or did she, at some point, was she more specific in what she indicated?

A: When I asked her what she actually saw, she was more specific.

Q: Do you recall, sir, what she specifically said when you inquired?

A: She stated that Chuck had slid some dope underneath the couch.

Q: Did you ask her what kind of dope?

A: Yes, sir.

Q: Okay. What did she indicate?

A: That it was pot.

Q: Did she indicate to you if she was familiar with what marijuana looked like?

A: No, sir.

Q: The, at that point, Mr. McArthur was still free to go in and out of the residence; is that correct?

A: Yes, sir.

Q: Were you aware, at that time, as to whether or not Mr. McArthur knew that Mrs. McArthur had seen him place his marijuana under the couch?

A: No, sir.

Q: So you didn't know one way or the other?

A: No, sir. I did not.

Q: You were there on a keep-the-peace call?

A: Yes, sir.

Q: Okay: It's fair to presume that people in those circumstances are going to be made at one another?

A: Yes, sir.

Q: And they're, in fact, going to be probably predisposed trying to get one another in trouble; is that a fair statement?

A: Yes, sir.

Q: In fact, that's what occurred here; is it not? Ms. McArthur basically told on her husband?

A: Yes, sir

Q: Now, there has been much made about your not allowing Mr. McArthur back in the residence. Why didn't you do that?

A: It's been my, through my years of experience or through my training and the schools that I have attended, that whenever you are obtaining a search warrant, you do not want anyone to disturb either the crime scene, disturb evidence, by going in or out of the area where there could be evidence.

Q: And specifically, what is the reason for that?

A: In a situation of where there could be possible drugs or so forth, to let the individual go back inside the residence, they could dispose or destroy the evidence.

Q: And Mr. McArthur was, in fact, aware that you guys knew that his stash was in the residence?

A: Yes, sir.

Q: Was Mr. McArthur, in fact, informed that the reason he couldn't go back in the house alone was so that he couldn't destroy the evidence?

A: Yes, sir. He was.

Q: Now, Mr. McArthur was not under arrest at that point in time?

MR. JUSTICE: I object. That's a legal conclusion.

MR. WILLIS: Your Honor, I think the officer can testify as to whether or not somebody said the magic words.

THE COURT: Well, that's a different question.

MR. WILLIS: Perhaps I should rephrase that.

THE COURT: Okay.

MR. WILLIS: Q. Mr. McArthur had not been told by yourself or any of the other officers at that point that he was under arrest?

A: No, sir.

Q: Had Mr. McArthur been handcuffed?

A: No, sir.

Q: Was Mr. McArthur told that he was not free to leave?

A: No, sir.

Q: Did Mr. McArthur, in fact, ask if he could leave?

A: No, sir.

Q: Was Mr. McArthur given a choice concerning his going back in the house? I guess what I am asking was Mr. McArthur told by yourself or another officer that he had to go in the house or was he only told that if he chose to go in the house that an officer would have to accompany him?

A: When he asked if he could go back in the house to get his cigarettes and use the telephone, I advised him I would need to go back in with him, reference the evidence issue.

Q: So you had made it plain to him that, in fact, that was only if he went into the residence?

A: Yes, sir.

Q: In fact—May I have a moment, Your Honor?

THE COURT: Uh-huh.

MR. WILLIS: Q. Assistant Chief Love, you indicated that when you, in fact, went back in the residence with

Mr. McArthur that you just basically stepped in the doorway; is that correct?

A: Yes, sir.

Q: The purpose for that being just to make sure he wasn't doing anything he shouldn't have been doing?

A: Yes, sir.

Q: Was there any search made of the residence prior to the time the warrant came back?

Q: No, sir.

A: The only search that was undertaken was after Judge Flannell had issued the search warrant; is that correct?

A: Yes, sir.

Q: And there were a couple of items of paraphernalia and some cannabis discovered?

A: Yes, sir.

Q: Did Mr. McArthur make any comment about that?

A: After he, we had executed the search warrant and the cannabis and drug paraphernalia was found and he was placed under arrest, he made some comments to me.

Q: Do you recall what those were?

MR. JUSTICE: Object. It's irrelevant.

MR. WILLIS: I'll withdraw at this point. I have no other questions[.]

REDIRECT EXAMINATION
BY MR. JUSTICE:

Q: Why didn't you arrest him before the search warrant was executed?

A: Because, at that point, sir, I, through my training, we had probable cause, I felt, due to Mrs. McArthur's statement, that I felt that it was best to wait until we got the search warrant to find the evidence. If we got search warrants granted, then once we found the evidence, that's when I placed, or Officer Skidis placed Mr. McArthur under arrest.

Q: Well, you've told me what you've done. I guess I don't understand why you just didn't go ahead and arrest him if you had probable cause at that time?

A: Again, my training and my experience, I felt that if we could get the search warrant that it would be proper to wait until we found it. If the judge granted the search warrant, we execute it, found the evidence, found the drugs or cannabis, paraphernalia, then we would place him under arrest.

Q: Would you have arrested him if the judge denied the search warrant?

A: I would not have searched the trailer at that point.

MR. WILLIS: I'm going to object to that. That's, I think that's speculative in terms of this.

THE COURT: Mr. Justice.

MR. JUSTICE: I'm trying to get him to explain why he did what he did in sort of a backwards way, I guess.

THE COURT: Well, I'll sustain the objection as to the question was stated.

MR. JUSTICE: I believe that's all the questions I have.

THE COURT: Okay. Thank you.

(Witness excused.)

MR. JUSTICE: We would call Charles Heddin or Charles McArthur.

CHARLES MC ARTHUR,

called as a witness on his own behalf, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION
BY MR. JUSTICE:

Q: Would you give us your name, sir?

A: Charles McArthur.

Q: Do you live at Lot 59 Graven's Trailer Court in Moultrie County?

A: Yes.

Q: On April 2, 1997, at about 3:15 in the afternoon, did the police officers come to your house to assist your wife with moving her stuff out?

A: Yes.

Q: At that time, had you consumed any alcohol, any illegal substances or anything that would alter your powers of observation?

A: No, sir.

Q: Did your wife move some of her stuff out?

A: Yes.

Q: At any time during the time your wife was moving out, did she have, or excuse me, were there police officers inside your trailer?

A: No, not inside.

Q: Officers were located where?

A: Out on the porch, I believe. I was inside.

Q: After your wife left, did an officer come to your door?

A: Yes.

Q: Who was that, Officer Love?

A: Yes.

Q: What did he say to you?

A: He said that my wife told him that she saw marijuana in the house. And he asked if he could search.

Q: And what was your response?

A: I said, not without a search warrant.

Q: And then what happened?

A: Then he asked my wife if she would go try to get the warrant through the judge.

Q: Did you hear this conversation?

A: Yes.

Q: Go ahead.

A: And she said yes. And I was outside. And there I stayed until the warrant came.

Q: Did you ask to go back in the house?

A: Yes.

Q: And did you go back, did you ask to go in the house unaccompanied?

A: Yes.

Q: Were you given permission to do so?

A: No.

Q: All right. More specifically, let's talk about that first conversation. Did, at some point, did you ask the officer or tell the officer you were going back in your house?

A: No.

Q: Okay. How did it come up that you were, you learned that you were not allowed to go back in your trailer?

A: I asked if I could go back in while they were waiting on the warrant. And he told me not without an officer present with me.

Q: And if you had been allowed to go back in the house, what would you have done?

A: I would have destroyed the marijuana.

Q: Did you ask the officer to go back in the house for that purpose?

A: Not, I didn't specifically say I wanted to go in to destroy anything that might be there. But I asked if I could go in until they returned with a warrant.

Q: Or not with a warrant, right?

A: Right.

Q: And how long was it before they returned with the warrant?

A: Over an hour. Maybe, even closer to two. I'm not really sure, exactly. But I know it was at least an hour.

Q: And what did you do during that entire time?

A: Stood on the porch.

Q: Was there an occasion where you went inside the house to get some cigarettes with the officer?

A: Yes.

Q: And was there another occasion when you went inside the house with the officer to call your mother?

A: Yes.

Q: Any other times you went inside the house?

A: I went in; I don't remember if I called my sister when I called my mom. But I know I called her too.

Q: On each of those occasions, the officers would not let you go in unless they went with you?

A: Right.

Q: And you had expressly told the officer that they were not permitted to come into the house without your permission?

A: Yes.

Q: Without a warrant?

A: (Nodded.)

Q: Say yes or no out loud.

A: Yes.

MR. JUSTICE: That's all the questions I have.

MR. WILLIS: Thank you your Honor.

CROSS-EXAMINATION
BY MR. WILLIS:

Q: Mr. McArthur, the officers also asked if you had any drugs in the house; didn't they?

A: Yes.

Q: Okay. And you lied; and you told him no, there weren't any drugs in the house; is that correct?

A: Yes.

Q: And I understand your testimony, sir, if I understand this correctly, you wanted to go back in the house, unobserved, so that you could destroy the evidence?

A: Yes.

Q: Did, at what point did the officers tell you that you were actually under arrest?

A: After the search warrant was executed and when they came back with the search warrant and went in the house, I showed them where it was at. And that's when I was placed under arrest.

Q: Okay. Now, Officer Love had indicated, did Officer Love or any of the other officers indicate to you that you weren't free to leave?

A: To leave the residence?

Q: Just to go away, if you needed to go to work or go to the store or something like that–

A: No.

Q: –go talk to your lawyer or go to your mom's?

A: No, they never told me I couldn't.

Q: Couldn't leave. Okay. Did they put you in handcuffs?

A: After I was arrested.

Q: Okay. That wasn't until after the warrant was served; is that correct?

A: Right.

Q: Okay. Did they search your person?

A: Yes.

Q: Okay. When did that occur?

A: After they found the marijuana.

Q: So after the warrant was executed. Did they read you your Miranda rights?

A: Yes.

Q: Okay. Did that also occur after the warrant was executed?

A: Yes.

Q: Now, Mr. McArthur, Officer Love told you that you could, in effect, that you could either wait outside or if you went back in that the officer would have to go with you; is that right?

A: Yes.

Q: So he, in fact, allowed you to go in for the purpose of making a phone call?

A: Right.

Q: Did he conduct any search while he was in there during that period of time?

A: No. The phone was just by the front door.

Q: Okay. So it wasn't a matter that you had to go all the way to the back of [the] trailer or anything of that nature?

A: No.

Q: So and, in fact, the officers basically respected your request to get a warrant; did they not?

A: Yes.

MR. WILLIS: I have no other questions.

MR. JUSTICE: No redirect.

THE COURT: Okay. Thank you[.]

(Witness excused.)

MR. JUSTICE: That's our evidence.

THE COURT: Anything?

MR. WILLIS: Your Honor, the only other thing I would ask, is I would ask the court to refer specifically to the records before the court being the affidavit, the Affidavits for Warrant, the Application for Search Warrant and the Warrant itself as it was previously entered by Judge Flannell in their case.

THE COURT: I have been handed 97-MR-2. Do you want to look at it, Mr. Justice?

MR. JUSTICE: No, I have copies of that, Your Honor. I'm not sure judicial notice should be taken for the purposes of this motion. It's what took place by these officers at this scene not what took place in Judge Flannell's office that is relevant to this hearing.

THE COURT: Okay. Any comment about this file?

MR. WILLIS: In reference to 97-MR-2, Your Honor, the issue of probable cause is an objective one. I think that in not, in not all search warrant cases is there involved probable cause also to arrest. This, however, is different. And I believe that the court can consider that.

Because that's an objective inquiry. And I think that the best evidence for that is the affidavits as were ruled on by the court earlier in issuing the search warrant in this case.

MR. JUSTICE: Judge, may I make one –

THE COURT: Sure. Go ahead.

MR. JUSTICE: Basically, what he is asking you to do is defer your decision to Judge Flannell's decision to issue the warrant. And that's not the issue here. This is a de novo hearing where you make a decision based upon the facts in this case.

THE COURT: Okay. The file is here, as I said. I haven't looked at it, but it's here. Let's go ahead and do the arguments first. And then we'll go from there. Mr. Justice.

MR. JUSTICE: Your Honor, I believe I gave you copies of my cases with my motion. They are not attached?

THE COURT: No, they're not. They are cited in Paragraph 5, but they're not copied.

MR. JUSTICE: They're not attached to the motion?

THE COURT: Do you want to look at it? They're not here.

MR. JUSTICE: No, no.

MR. WILLIS: For what it's worth, counsel, I didn't get them either. I got the cites, but–

THE COURT: It says, Paragraph 5 says: Copies attached. But they're not attached.

MR. JUSTICE: My humble apologies.

THE COURT: No problem. They're just not here. That's all I'm saying.

MR. JUSTICE: Well, I want you to read the law.

THE COURT: So do I.

MR. JUSTICE: The essence of our position is pretty straightforward.

The Supreme Court has said that, that searches and seizures of any kind require the meeting of certain circumstances. If a seizure is improper, then anything that follows from that, in the form of the gathering of evidence, must be suppressed. To say that a man can't go in his own home without an officer present, is clearly a seizure. So the question becomes, did there, was that seizure, in other words, preventing him from going in his own home. And I know exactly why the officer did it. And we tried to make the record very clear as to what would have happened if he did do it. The problem is, he made the decision not to arrest him until after there was a, his suspicions were confirmed. That's what he won't say, and that's what really happened.

They suspected, based upon this lady's statement, that there was pot inside. And they wanted that pot before they would arrest him. If, until that decision had been made or that search had been done, there was no evidence of a crime or insufficient evidence. And what our position is, based upon the *Dunaway* cases and the Illinois cases that have accepted it, is that if you gather this evidence because of an illegal seizure, then it must fall. And there is no question they got this evidence be-

cause of this officer's conduct in refraining from allowing him to go in his home. Because if he had not refrained [*sic*] him, it would have been gone by the time the search warrant was there. And so the evidence remained available for the sole purpose or solely because this officer kept this man on the porch.

Now, I guess we need to ask ourselves, if officers suspect illegal conduct and they, and they come to the house and they say you can't go in your house, then they are, in essence, executing a search warrant or seizing property inside that house without a search warrant. Because they have not allowed that house to be used by its owners. And that's the tough part about this case. And that's the unfair part about this case, is they have, in essence, sealed off that house until a judge can give them a stamp of approval to enter it.

You can't do that under the Fourth Amendment. Because our homes are sacrosanct. They are protected. You can't effect the right of anyone within their home without a search warrant. And they did that to him for an hour while they waited. And that hour allowed this evidence to remain intact and not be destroyed and allowed the warrant to find something.

And I know this is a very unappealing argument to the court. But what is at stake here is the freedom of one's home versus a little bit of marijuana and also the law.

Thank you.

MR WILLIS: Your Honor, the counsel, I think, and not intentionally, misstates the law. I understand what he's driving at. But they're really several issues in this.

The issue in this case is not one of the home is absolutely sacred. The Fourth Amendment to the United States Constitution and the concurrent provisions of the Illinois Constitution do not prohibit warrantless searches. They don't prohibit warrantless seizures. They simply prohibit unreasonable searches and seizures.

This issue, pretty much on point, was addressed by the United States Supreme Court in the case of *Segura*, S-E-G-U-R-A, *versus United States*. That's to be found at 468 US 796. I'm quoting from 82 Lawyers' Edition 2d 599.

In the *Segura* case, the officers had probable cause to believe that, in fact, an offense had been committed. The officers in that instance actually arrested some individuals. And basically, secured the premises pending the issuance of a search warrant.

In this instance, I submit Number 1, that Mr. McArthur was not under arrest. That, I mean he did not testify, as I recall, that he felt he was under arrest or felt he wasn't free to leave. He wasn't handcuffed. He wasn't told he was under arrest. He wasn't Mirandized. He wasn't searched until after the warrant was executed. This is true. However, I submit that, in this instance, that probable cause existed for Mr. McArthur's arrest from the get go.

You have, in this instance, an individual who's a reliable individual, who indicates to the officers that she had just immediately before had observed a crime, was specific in terms of what she told the officers that she had observed Mr. McArthur in possession of a quantity of cannabis. That, in and of itself, is sufficient to arrest Mr. McArthur. Probable cause is a very low burden of

proof. In this instance, however, the officers, due to the procedures that they have been trained by, chose not to effect the arrest but to do what I believe is the constitutionally reasonable thing. That is, they simply engaged in the seizure, not of Mr. McArthur because he was free to go, but a seizure of his residence.

The Supreme Court Chief Justice Berger [*sic*] in his opinion in *Segura*, which is at 604 of the Lawyer's Edition, second cite of that, indicates that, talking about two questions in this instance: Whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment. And then he goes on to talk about, you know, should evidence seized pursuant to a warrant, after the warrant was obtained in that case, it was 19 hours later, not an hour as in this case, should have been suppressed as fruit of the illegal entry, which is similar to what counsel is arguing.

Mr. Justice [*sic*] Burger indicated that on the first question, the question of whether the entry and securing of the premises constituted an impermissible seizure, indicated: ["]On this first question, we conclude that, assuming there was a seizure of all the contents of the petitioner's apartment when agents secured the premises from within["] – [*sic*] And here again, the officers largely stayed out of the premises; they didn't go inside it, only for limited purpose and then did the search here. [*sic*] – ["]that seizure did not violate the Fourth Amendment.["]

["]Specifically, we hold that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and,

for no more than the period herein involved, secure the premises from within to preserve the status quo while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures.["]

And the court, again, at, I believe, page 609 of this decision in part IV deals with this question more in depth. On 609, in the second paragraph on the right-hand column, the court again indicates: ["]By its terms, the Fourth Amendment forbids only "unreasonable" searches and seizures. Assuming, *arguendo*, that the agents seized the entire apartment and it's contents, as petitioners suggest, the seizure was not unreasonable under the totality of the circumstances.["] The court then, again, goes on and talks about that there are different interests implicated by seizure than there is by a search.

In terms of a seizure, and what the officers here did was simply deny Mr. McArthur the ability [to] commit a crime, to obstruct justice, which he has indicated he would have done. He would have destroyed the evidence. There can be no constitutional right to commit an offense. And, in fact, in this circumstance, I would submit that, had the officers, in fact, simply skipped the warrant procedure and simply seized the evidence, they would be within their authority to do so, because that constitutes exigent circumstances. In this instance and where the defendant has admitted in pleadings and under oath that it was his intention to destroy the evidence, the officers are empowered to prevent that.

In this instance instead of immediately arresting Mr. McArthur and searching the residence without a war-

rant, they did what I would submit was the absolute, most constitutionally reasonable thing for them to do. And that is they simply secured the residence for the sole purpose of preventing the destruction of the evidence and submitted the issue to a neutral, detached magistrate to allow a judge to make the determination whether there was probable cause.

And in this instance, I would submit to the court that there has been no violation of Mr. McArthur's rights, that he has no right to, in fact, destroy evidence and that the action engaged in by the officers is clearly, under *Segura*, justifiable. And it is not unreasonable for terms of the Fourth Amendment or the Illinois statutory and constitutional procedures basically tracked on [*sic*].

THE COURT: Mr. Justice.

MR. JUSTICE: Your Honor, the *Segura* case is dependent upon a very important fact. And it's on page 613. And that is the agents entered and secured the apartment from within. They, apparently, the court accepted the fact that they had probable cause to go in and enter the apartment and arrest people inside the apartment. And they made an arrest, and then they secured the place after making the arrest and got a search warrant. We don't have those facts in this case.

I think you understand the issue. I won't beat a dead horse.

MR. WILLIS: Your Honor, also on Page 613, the court indicates that, on the left-hand side here, on the end of that long paragraph, that, basically, the initial entry, legal or not, does not affect the reasonableness of the seizure. And again, what we are talking about is the

seizure of the residence solely for preventing the destruction of the evidence pending a warrant under these circumstances [was] reasonable.

The court in *Segura*, on page 613, indicates that under either method, whether entering and securing from within or a perimeter stakeout, with agents controlling the apartment pending the arrival of a warrant, both an internal securing and a perimeter stakeout interfered to the same extent with the possessory interest of the owners. Under these circumstances, I submit that there is nothing at all unreasonable about the officers[']actions.

THE COURT: Anything else?

MR. JUSTICE: No.

THE COURT: Okay. Let's take a short break, and let me look at the materials, probably 10 or 15 minutes.

MR. WILLIS: That's fine, Your Honor.

MR. JUSTICE: That would be fine.

(Recess.)

THE COURT: Thank you for your patience. I have been reviewing materials provided by both attorneys. And I appreciate that. It's a tough case. It's the first time I remember having a case where the question of search and/or seizure turned on whether a person was allowed to go into his own home or not. Usually, it's the other way around, you can't go away from here and, rather than to go into this place.

And in some ways it is similar to a vehicle search situation were a stop is made and the vehicle is held until a warrant is obtained. It's not exactly like that, but

it reminds me of that. Looking at the cases that you have provided, I took particular interest in the *Parker* case, *People versus Parker*, 1996 Illinois Appellate Court case. That was the case where the police had set up metal detectors in a school, a young man approached, entered the school building, approached the metal detector, apparently observed what was happening, turned to leave and was stopped by an officer. The officer said, ["]you're required to go through the metal detector.["] The student then lifted the front of the shirt, and a gun was visible to the officer. That was taken by the officer. The student was arrested.

The analysis in that case, I think, is particularly interesting as it relates to this case. They are not any way identical. But in the *Parker* case, there was a motion to suppress and to quash arrest. The trial court granted that motion. The Appellate Court affirmed. And I only mention that one because I found it particularly helpful. I think the *Segura* case is distinguishable from the situation at hand.

I did look at the other file, so that you know, for one reason. I wanted to see what the time frame was between the, testimony here today was that this incident occurred at about 3:15 p.m. I wanted to check the search warrant to see when it was issued just to see what kind of a time lag there was. It was 5:05 so just slightly less than two hours, which is consistent with the testimony today. Someone said it was more than an hour, maybe close to two hours. And that's about what it was. But I mentioned that so that you know I looked at that file for that purpose.

I don't have much else to say. I think that, based on the law, and I have commented on, particularly, the *Parker* case, I think the motion should be granted. Show the Motion to Suppress is granted.

Where do we go from here is the next question.

MR. WILLIS: Your Honor, it would be my intention to file a Certificate [of] Impairment. Given that, I would suggest the bench trial simply be continued until further order.

THE COURT: Any disagreement with that?

MR. JUSTICE: Your Honor, under these circumstances, we would ask the defendant be released from bond and his bond returned.

MR. WILLIS: I don't object to that, because obviously it's going to be 18 months probably before the Appellate Court even sees this.

THE COURT: Let me do it this way. I'll just show that the allotment for trial is vacated, and the bond is released. We will wait to see what happens.

MR. JUSTICE: That's enough for the clerk to do what she needs to do?

MR. WILLIS: It should be.

THE COURT: I think so. I will leave copies of case authority in the file and look forward to hearing more from the Appellate Court.

MR. JUSTICE: Fifth District, right?

MR. WILLIS: Fourth District, counsel.

THE COURT: I'll just say the Appellate Court, wherever they may be.

Which were all the proceedings had and entered of record in said cause.

[Court Reporter's Certification Omitted]